

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re: ) Chapter 11  
 )  
 DELPHI CORPORATION, et. al., ) Case No. 05-44481 (RDD)  
 )  
 DEBTORS )  
)

---

COMMISSIONER OF MASSACHUSETTS DEPARTMENT OF REVENUE'S  
OPPOSITION TO DEBTOR'S OBJECTION TO ALLOWANCE OF THE PROOF OF  
CLAIM OF MASSACHUSETTS DEPARTMENT OF REVENUE (CLAIM NO. 3092)

TO THE HONORABLE ROBERT D. DRAIN UNITED STATES BANKRUPTCY  
JUDGE:

NOW COMES Alan L. LeBovidge, Commissioner of Revenue for the Commonwealth of Massachusetts ("MDOR") who hereby opposes the Debtor's Objection to Allowance of the Proof of Claim of the Massachusetts Department of Revenue ("Objection"). As grounds for its opposition, MDOR states as follows:

**MDOR STATEMENT OF POSITION**

1. In reference the Debtor's objection to the Massachusetts Department of Revenue's Claim No. 3092 for \$723.16, the MDOR records indicate that this claim was for withholding taxes for the quarter ending September 2005. Both the tax return and payment were received by the Massachusetts Department of Revenue on October 17, 2005. Four days later on October 21, 2005 the MDOR was noticed that the payment was dishonored.
2. The MDOR has no record Delphi making good on this payment.

### **ASSESSMENT BURDON OF PROOF**

3. On April 26, 2006, the MDOR filed a Proof of Claim in this case in the amount of \$723.16 for unsecured priority taxes pursuant to Section 507(a)(8). This claim is based upon unpaid withholding taxes of Delphi, Inc. for the quarter ending September 2005.

4. Under the laws of the Commonwealth, an assessment by or on the behalf of the Commissioner of Revenue is considered valid and the burden of proof and persuasion is upon the taxpayer to prove otherwise. *M & T Charters, Inc. v. Commissioner of Revenue*, 404 Mass. 137, 140 (1988), and *Towle v. Commissioner of Revenue*, 397 Mass. 599, 603 (1986)<sup>1</sup>. Consequently, in this objection, the burden of proof is upon the objector.<sup>2</sup> In *In re Hayes*<sup>3</sup> it was determined that there is nothing in the Bankruptcy Code or Rules to suggest that Congress intended to supplant the well-established rule that the burden of proof rests on the taxpayer in a contest involving a tax assessment. The debtor bears the ultimate burden of proving that the assessment is incorrect by a preponderance of the evidence.<sup>4</sup>

5. In determining the allowance of a state tax claim, the issue of the burden of persuasion is a matter controlled by state law.<sup>5</sup> The taxpayer bears the burden of proof.<sup>6</sup> In its treatment of the grounds for the Debtor's objection to the MDOR Claim, as amended, the Objection falls short of the Debtor's burden.

---

<sup>1</sup> See also *Adams v. Tashjian*, Docket No. 96-40063-RCL (D. Mass. July 30, 1997) (Young, D.J.). “[I]t was the burden of the taxpayer, Tashjian, to convince the Bankruptcy Judge that the tax assessments made by the [Massachusetts] Department of Revenue] were erroneous, arbitrary, or capricious.” At p. 4.

<sup>2</sup> *Raleigh v. Illinois Department of Revenue*, \_\_\_U.S.\_\_\_, 120 S.Ct. 1951 (2000), aff'd sub nom. *In re Stocker*, 179 F.2d 546 (C.A. 7 1999).

<sup>3</sup> *In re Hayes*, 240 B.R. 457 at 463 Bkrtcy. (D.mass. 1999)

<sup>4</sup> *In re Hayes*, p. 463, quoting *Thinking Machine I*, 203 B.R., at 2(Banrtcy no. 94-15405-WCH (1996)).

<sup>5</sup> *Id.* at 463.

<sup>6</sup> *In re Heathco International*, 257 B.R. 379, 382 (Bkrtcy Dmass 2001), citing *Commissioner of Revenue v. J.C. Penney Co., Inc.*, 431 Mass. 684, 730 N.E.2d 266, 268 (2000), *Koch v. Commissioner of Revenue*, 416 Mass. 540, 624 N.E.2d. 91, 100 (1993) (citing *M & T Charters, Inc. v. Commissioner of Revenue*, 404 Mass. 137, 533 N.E.2d 1359, 1359 (1989)).

**CONCLUSION**

The Debtor's objection must fail and the MDOR Claim be allowed in whole.

**WHEREFORE**, the MDOR requests that the Debtor's Objection to MDOR's Claim be overruled, and that this Court enter any other order or relief as the Court deems just and proper.

**Respectfully submitted,**

**Dated: December 18, 2006**

**ALAN L. LeBOVIDGE  
COMMISSIONER  
MASSACHUSETTS DEPARTMENT OF  
REVENUE**

**By his attorneys,**

**THOMAS F. REILLY  
ATTORNEY GENERAL OF MASSACHUSETTS**

**Kevin Brown  
Special Assistant Attorney General**

---

**David T. Mazzuchelli (BBO # 565641)  
Counsel to the Commissioner  
Massachusetts Department of Revenue  
Litigation Bureau  
100 Cambridge Street, P. O. Box 9565  
Boston, MA 02214  
(617) 626-4022**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re: ) Chapter 11  
 )  
 DELPHI CORPORATION, et. al., ) Case No. 05-44481 (RDD)  
 )  
 DEBTORS )  
 )

---

**CERTIFICATE OF SERVICE**

I, David T. Mazzuchelli, hereby certify that I served a copy of the within *Commissioner of Massachusetts Department of Revenue's Opposition to the Debtor's Objection to the Allowance of the Massachusetts Department of Revenue's Proof of Claim*, by first class mail, postage prepaid, upon the parties or persons appearing on the accompanying SERVICE LIST attached hereto.

---

David T. Mazzuchelli  
Dated: December 18, 2006

**SERVICE LIST**

**In re Delphi Corporation**

**Chapter 11, Case No. 05-44481 (RDD)**

**Honorable Robert D. Drain  
United States Bankruptcy Judge  
United States Bankruptcy Court for the Southern District of New York  
One Bowling Green, Room 610  
New York, New York 1004**

**Delphi Corporation  
5725 Delphi Drive  
Troy, Michigan 48098  
Att'n: General Counsel**

**Counsel to the Debtors  
Skadden, Arps, Slate, Meagher & Flom LLP  
333 West Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
Att'n: John Wm. Butler Jr., John K. Lyons and Randall G. Reese**